

AUG 01 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO VIVANCO-GONZALEZ,

Defendant - Appellant.

No. 07-30096

D.C. No. CR-06-02101-WFN

MEMORANDUM^{*}

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO VIVANCO-GONZALEZ,

Defendant - Appellant.

No. 07-30097

D.C. No. CR-07-02003-WFN

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior District Judge, Presiding

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

In these consolidated appeals, Francisco Vivanco-Gonzalez appeals from his conviction for illegal reentry in violation of 8 U.S.C. § 1326, and from the district court's revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Vivanco-Gonzalez contends that the district court erred in denying his motion to dismiss the indictment charging him with illegal reentry because, during removal hearings in 2005, his due process rights were violated when he was not adequately advised of his eligibility for pre-hearing voluntary departure. We conclude that Vivanco-Gonzalez cannot demonstrate prejudice from any due process violation because he also was removed in 1998, and he could not have been eligible for pre-hearing voluntary departure as to both removals. *See* 8 U.S.C. § 1229c(c); *United States v. Muro-Inclan*, 249 F.3d 1180, 1184 (9th Cir. 2001).

Because the district court did not err in denying the motion to dismiss the indictment, it did not err in concluding that Vivanco-Gonzalez had violated the condition of his supervised release that he not commit another Federal crime. *See*

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

18 U.S.C. § 3583(e)(3); *United States v. Musa*, 220 F.3d 1096, 1100 (9th Cir. 2000).

AFFIRMED.